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# **Prisons as progressive punishment? The state of corrective services**

Mark Findlay

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In the early days of his third term as Premier of New South Wales, Bob Carr challenged his government to move away from current law and order politics and to come up with a more progressive approach to punishment. Central to this would be a reconsideration of the place of the prison in criminal justice.

Prisons, by their nature and the communities they house, suffer more acutely from the factors of social exclusion that characterise the underprivileged sectors of Australian society. Without the exacerbation of a custodial experience, these characteristics alone militate against the successful reintegration of prisoners back into the community. Any revision of punishment policy, therefore, requires more than retarding spiralling imprisonment rates. For those who do end up in gaol, and for those employed to manage them, the prison environment requires significant redevelopment if inmates are not to leave prison more maladjusted than when they went in.

Prison staff have either worked to ameliorate the negative influences of social exclusion amongst inmates, or in a regrettable minority of instances have contributed to the brutality of prison experience. In New South Wales (as no doubt in other states), for instance, prison education officers have over the years had a significant influence in improving prisoner literacy rates. In so doing, they have addressed one of the simplest and yet most significant factors at work against prisoner reintegration. Prisoner education is recognised as one of the few correctional initiatives which seem to correlate with improved recidivism prospects. Unfortunately, however, many cost-effective prison programmes, like remedial reading, have recently suffered from a deprivation of resources and policy commitment, while expensive and selective cognitive behavioural initiatives have been favoured by prison administrations throughout Australia.

This chapter looks first at the place of 'corrections' in New South Wales prisons in particular today. It argues that in the current 'rebirth' of the prison there has been a move away from basic, egalitarian inmate programmes in preference for elite cognitive therapies. This shift has been justified, it is argued, by the misguided belief that prisoners with the greatest risk of serious re-offending can be identified, and on them limited correctional resources should be concentrated. In addition, this is again incorrectly supported by the conviction that, for these few inmates, their recidivism rates can be radically decreased through psychological intervention in gaol.

Against this, it is proposed that community corrections are cheaper and more efficient than prison rehabilitation. Having said that, for those available for corrections in custody, a more general improvement in the social environment of the prison is a simpler, cheaper and fairer way of dealing with recidivism than elite cognitive therapies. The important ancillary benefit of this approach is that inmates and prison staff contribute to a more productive prison community. The quality of prison life then becomes as important a performance measure for the prison as recidivism, and recidivism will be improved as the prison addresses the fundamental issues of social exclusion.

The challenge is for prison management, staff and the community at large to accept that more humane rather than harsher prison conditions may be more conducive to lower re-offending and, thereby, improved community safety. This is the future for the prison in progressive punishment, rather than a problematic commitment to the deterrent effect of 'tough gaol time'.

## **Corrections in prison?**

In 1988 I published an article entitled *The Demise of Corrections*. The central thesis was that penal correctionalism had failed because it was piecemeal and without the support of a well developed commitment to alternative strategies to the prison:

One would be rightly cynical of the relevance of correctionalism for criminal justice, when an examination is made of the limited, unimaginative and few semi-custodial and non-custodial alternatives which have been introduced into NSW since settlement.

The criticism is sharper in the current context of imprisonment in NSW, where correctional expectations continue to disappoint, despite a recent revival of interest in 'what works' offender management programmes.

The 1988 argument was advanced in an environment of imprisonment rates on the decline, with serious discussion in NSW about never opening another prison for women, and rehabilitation being a pre-eminent principle in sentencing. Those were the last days of decarceration and economic rationalism as drivers of NSW prison policy, prior to the emergence of 'truth in sentencing', penal retributivism and the rapid escalation in prison capitalisation. Last year, imprisonment rates per head of population in NSW increased by 2 per cent while community corrections' figures went down 7 per cent. The imprisonment of indigenous offenders in NSW for that year was over 2000 (per 100,000) compared with 117 (per 100,000) for non-indigenous populations. Community correction figures remained three times that of persons in prison, while recurrent expenditure on the prison (at almost half a billion dollars) was ten times the investment directed to community corrections.

In these days of post-just-deserts punitive conservatism, such a criticism has almost become an article of faith for punishment practice in NSW. It is as if the significance of restorative justice and the manifold empirical failures of the prison have simply been swept aside, in favour of a vision of punishment which promotes custodial outcomes as the answer to public dissatisfaction with criminal justice. All this is politically justified in terms of deterrence and community safety. Politicians, judges and prison administrators are frightened to talk publicly in terms of corrections, rehabilitation and reform, and the legislation on sentencing side-lines their significance.

What is the taxpayer getting in return for the punishment dollar? It now costs over \$160 per day to keep a prisoner in the state's gaols, half that figure going in capital costs. The real total cost of corrective services per head of population in NSW is almost \$90 per annum. Despite the increase in prison investment, the indicators of prison effectiveness have not improved in the past five years.

This chapter returns to the failure of imprisonment as a foundation for punishment policy. The argument is founded on the premises that rehabilitation is more effective (at least in a cost/benefit sense) outside the prison, and a more balanced and successful punishment strategy must first achieve a reduction in the use of imprisonment. It does so realising that the popularity of the prison has never been stronger. If American experience is anything to go by, however, the recent political love affair with imprisonment may be coming to an end. An article in the *New York Times* in April 2004 observed:

When violent crime rates were higher, many politicians were afraid to be seen as soft on crime. But now that crime has receded and the public is more worried about taxes and budget deficits, it would not require extraordinary courage for elected officials to do the right thing and scale back on the overuse of jails and prison cells.

Now is the time for reflection on punishment and its efficacy. On the other hand, an ill-considered alliance with the reborn psychologies of behaviour management may not reclaim the worthy aspirations of rehabilitation as a principle for punishment.

In order to have an impact on the future of incarcerated generations we do not have Mathiesen's luxury to eschew prison reform as a de facto policy for the perpetuation of the prison. In the short-term, incredibly costly and unjustifiable on almost any measure as it is, the prison remains the centre-piece of punishment policy, and as such we must address its failings in the context of the future for rehabilitation as a principle of sentencing and punishment policy.

### **Fading hopes for corrections?**

Why is it that corrections remains a euphemism in the popular culture of punishment in NSW? Do we continue to be bound to the single aim enunciated by Royal Commissioner Justice Nagle that inmates should not leave the prison in a worse state than before they were incarcerated? Is it that rehabilitation has failed the prison rather than the prison failing society?

Some would have it that the topic of prison rehabilitation, particularly offender treatment, has been greatly revived in the past decade. Identified by the rise in popularity of offending behaviour programmes, prison rehabilitation has moved down at least one of two paths: 'risk need' and 'good lives' models. It has also been argued that these might be integrated to form the basis for the development of the next generation of prison programmes.

There is, however, a resonant critique of the motivation behind this new era for rehabilitation in prison. The criticism reflects the long established debate in criminology between psychological and social determinism. Let me pose a simple example. There appears to be a significant connection between the imprisonment of parents and the eventual incarceration of their children. How can this be explained? Social determinists would propose that the criminogenic structural conditions of family life for the parent and the child remain constant, and the marginalisation they produce leads to crime and prison. Psychological behaviourists will either blame criminal genealogies, crime as an intergenerational or genetic feature, or learning patterns within families that promote crime.

Psychological determinism has taken hold in contemporary prison rehabilitation thinking. A reason for this maybe that it holds out a causal connection between prison programmes and the reduction of recidivism. In a more cynical context, it also allows prison administrators to rationalise programme resources and to restrict programme entry on the basis of risk.

The criminogenic needs model of offender programming in prison argues for psychological intervention which addresses criminogenic thinking, needs and risk on the basis of cognitive behaviour research. Advocates of the model argue that a greater adherence to psychological justifications for rehabilitation will exclude other modes of explanation. Even the belief that rehabilitation in prison has failed can be overcome by psychological models such as this, which explain criminal behaviour and go on to address offender risks, such as eventual re-offending. This predictable intervention approach is said to enable targeted programme funding that can significantly reduce re-offending through programming of cognitive skills, promoting behavioural change.

Like the treatments and therapies of the 1960s that left rehabilitation in prison in tatters, this new wave of behaviourist prisoner programming may be equally problematic. For instance, when criminogenic needs programmes themselves are unpacked they seem to contain little which is different from the teaching

methodologies employed by prison teachers in general curricula. In addition, the empirical research tends to suggest the justification that criminogenic needs approaches will reduce the re-offending of the most risky and the most dangerous, cannot be substantiated. Canadian correction services research does not support the assertion that high-risk offenders who receive these programmes in institutional settings gain significantly in the sense of risk reduction. Low risk offenders seem to benefit from such cognitive programmes whether they participate in them within community corrections or institutional environments.

Generally programme assignment is based on the principle that offenders who are at high risk of recidivism should be given priority for treatment. It is assumed that allocation of services to low risk offenders is wasteful because the latter group recidivate at rates which are too low to be affected by interventions.

Maybe this is the issue. The presumed positive connection (and inherent resource justification) between cognitive behaviour programmes and the reduction of recidivism on the basis of risk prediction may not justify the investment, or the associated strategic resource targeting and access restriction. In saying this I do not dismiss the potential correlation between risk prediction and improved programme outcomes. What seems from the research to lack justification is risk classification based on diagnosis of the original offending behaviour, rather than more material indicators, such as the offending history of the inmate, age, drug record and current offence.

The reliability of claims that selective allocation of cognitive behavioural programmes, based on individualised criminogenic diagnosis, will reduce recidivism is suspect. The ability to diagnose the cause of the inmates underlying criminal behaviour through psychological determinism is not sufficient to overturn more universal rights to programme access for prisoners. If this diagnostic capacity was routinely available, and it is not, then such predictive wisdom would be more economically applied to crime prevention than correctional remedies.

Reaching these conclusions should not invite prison administrators again to retreat from rehabilitation as a legitimate motivation for investment in prisoner education, employment and life skills programmes. Rather, it suggests the promotion of these directions for what we will later refer to as 'quality of prison life' reasons, freed from unrealistic determinist performance measures.

### **Criticising the contemporary penal model for criminal justice**

In recent years in NSW, political and public debate about criminal justice has moved from prison reform, through police reform and on to sentencing. Unfortunately, the analysis of sentencing has been constrained by several taken-for-granted public truths: judges are soft on crime; tough sentencing makes for community safety; sentencing discretion needs to be constrained because it is inconsistent; lenient sentences are evidence of inconsistency; harsh imprisonment sentences are the only appropriate response to all crimes that make the community feel unsafe.

Responding to this pressure, the legislature has restricted sentencing discretion, raised sentencing ranges, introduced more factors of offence aggravation, reduced opportunities for executive release, and downplayed any punishment strategies beyond imprisonment. This has led to more people going to prison for longer. Remand populations are at record highs. Any court disposition which might be interpreted as soft on crime is now met with the media response that prison is the only appropriate response. As a consequence, criminal justice policy is skewed towards concerns about penal outcomes. Limited and

costly prison resources are being squandered on whole classes of offenders who Justice Nagle declared as unsuited for prison. Suggestions that short-term prison sentences are ineffective now seem novel.

More than this, however, everything associated with criminal sanctioning is measured against penal expectations, principal amongst these being community safety. Yet, even in this context, it is not easy to argue that rehabilitation needs to be directed towards cost-effective themes of social restoration, rather than psychological and institutional reprogramming. With individual responsibility and appropriateness re-emerging in sentencing principles, it is not surprising that the behaviourists are back in the ascendancy when it comes to inmate programming.

### **Custody as the challenge to corrections**

The custodial environment is justified in terms of a variety of principles of punishment. Despite their problematic nature, however, recidivism figures do not suggest that the prison component of a sentence improves prospects for deterrence or rehabilitation, by comparison with other sentencing options. In a recent UK Home Office review of punishment outcomes, 59 per cent of prisoners discharged from prison in 1998 were re-convicted within two years of release. As for community corrections, despite a high level of successful completions (over 80 per cent), the actual re-conviction rate remained around 55 per cent. The crucial distinguisher, therefore, may be the economic and emotional cost of imprisonment, against negligible comparative benefit on the recidivism score.

While Weatherburn suggests that higher imprisonment rates have some impact on crime rates, the best figures he can draw are a 10 per cent increase in the prison population bringing about a 2-4 per cent reduction in crime. Translated to current NSW punishment practice, that would mean that an investment of around \$350,000 might register a minimal crime rate drop. If the same was to be spent on community corrections and probation in particular, the return on crime reduction would be significantly better.

The ultimate popular wisdom on why we need prisons is that they contain the dangerous and make communities safer, at least for the term of the imprisonment. Hence, the longer we can make that term, the safer we feel. Except for the occasional good year, escape rates in NSW continue to be around 1.5 per 100 prisoners. But at over 70 a year that may not be such a comforting figure.

The data referred to in other parts of this chapter tends to suggest that, in terms of recidivism, deterrence, and even crime prevention, the results from community prevention options are no worse than the prison, often better, and always so much cheaper. In addition, it would appear that rehabilitation and restoration have better chances of success outside the prison than in a custodial setting.

### **Loss of correctional motivation outside prison walls**

The deteriorating relative investment in community corrections in recent years speaks volumes about how often successful, non-custodial punishment programmes are out of political favour. In addition, the predominance of the prison as the popular punishment model has meant that under-resourced and apparently undervalued alternative sentencing options do not figure in political considerations of the efficacy of the criminal sanction.

Recent evaluations of the Drug Court and Juvenile Conferencing in NSW should give the community confidence in diversionary initiatives, and the international experience of both suggests a significant potential benefit in their expansion. However, the corrections discussion seems disproportionately located

in custodial settings. A consequence of this might be to expect research and development in the area of pre-release programmes. The research is there, as well as the empirical confirmation, that well planned and well-resourced pre- and post-release initiatives will ensure important and realistic correctional outcomes.

As will be mentioned, the challenge is to reinvest in non-custodial corrections, and to recognise the corrective capacity of community collaborations and partnerships. This will require some declaration of political interest. To ensure this in the prevailing penal climate, it may be necessary to include the development of community corrections models prominently within an integrated progressive punishment plan.

### **Is correction possible in prison?**

Victoria, for instance, is investing substantially in a best practice strategy to reduce re-offending, as Birgden explains:

In addition to risk management to address community protection and justice principles, enhanced well-being to address autonomy and therapeutic principles is required. The psychological theory of good lives proposes an enhancement model of rehabilitation. The legal theory of therapeutic jurisprudence proposes how the roles of legal actors may be therapeutic. Both theories are concerned with the enhancement of psychological well-being.

Birgden argues for a correctional system responsive to offenders. She suggests the possibility of a 'culture shift' to reaffirm rehabilitative as well as punitive goals for sentencing.

Where cognitive treatment programmes in prison seem to work against a measure of reconviction, they have been operated in a 'what works' context. Programmes which come within this reference include the Canadian-originated 'Reasoning and Rehabilitation' and 'Enhanced Thinking Skills'. These programmes promote self-control (thinking before acting), inter-personal problem solving skills, social perspective taking, critical reasoning skills, cognitive style, and understanding the values which govern behaviour. Not inconsistent with the Canadian studies, while reconviction rates for the treatment population were up to 14 per cent better than the control group, this only held for medium to low risk prisoners. For high risk, the differential fell to a low 5 per cent. In any case, this study provides a potential for a cost effectiveness evaluation of offender programmes.

As suggested earlier, recidivism rates alone as a performance measure of the effectiveness of offender programmes are too narrow an evaluation of rehabilitation practice in prison. More realistic is an integrated approach focusing on the climate of programme delivery, cost effectiveness, the programme's integrity and the treatment outcomes. In this respect, life quality issues are a vital measure of the relevance of correctional programmes in prison.

If rehabilitation is to be preferred as a motivation for punishment, then its location should be in community corrections and restorative environments, if only on the basis of cost effectiveness considerations. In saying this, however, in the medium term prison will be the environment for certain offenders, and there is no reason to deprive them of rehabilitation programmes, provided performance measures and resource justifications shift from unrealistic to simple, practical, obvious and predictable concerns.

There is significant evidence that prison life and society tends to exacerbate the behavioural and social determinants of crime. Violent, inhuman, unsafe, confrontational, and exploitative prison settings will distort appropriate social and moral messages consistent with crime prevention. A reluctance to deal with illiteracy, drug abuse, anger, indolence, and marginalisation will leave offender populations ill prepared for social reintegration. An under-resourcing of pre-release programmes will compound the problem.

These issues can be confronted in a more basic, universal, best practice model for prison life, and as such will achieve the small but consistent improvements in prisoner life quality that produces measurable performance indicators.

The Home Office, as the administrator of English prisons, is now required to meet modest targets in the improvement of prison life and the reduction of re-offending following release. This has necessitated the development of a new context for corrections, one directed to the improvement in the quality of prison life and an investment in 'what works' with offenders. A recent study to evaluate the quality of life in five English prisons from the perspective of staff and offenders found that staff and prisoners agree on 'what matters' in assessing prison quality, suggesting that there is a broad consensus about values; that these include respect, fairness, decency and order; that prison life quality resembles the expectation for civil society; and that safety is a critical concern. One prisoner respondent reflected on his aspirations for prison treatment:

To me, being treated with humanity means being provided adequate, reasonably comfortable and clean accommodation and being acknowledged as a person with individual needs, desires, concerns, strengths and weaknesses.

Prison staff would find it hard to argue against this. However, it is the bigotry of public opinion about prisoners 'getting it too easy' which tends to endorse further social exclusion in prison. Paradoxically, it is this that increases the likelihood of re-offending on release and the associated threat to community safety. Along with this commitment to the quality of life in prison has been an appreciation that time and money needs to be invested on an inmate-by-inmate commitment to improved sentence planning, and better arrangements for post release supervision.

### **Progressive punishment plan: harmonising sanction and rehabilitation**

If crime control and community safety are to continue as the motivations for punishment (recognising just deserts and deterrence principles), then lower re-offending targets as public service/government commitments seem reasonable for corrective services agencies. This means that, for rehabilitation programmes to play a realistic part in the achievement of these targets, there must be a two-pronged approach to corrective services:

- (1) In an atmosphere of rationalised prison resources, correctional programmes should be integrated and offender-centred. In this respect, individualised sentence management strategies should be a priority. Life quality concerns will be an important programme focus and relevance indicator. The programmes must operate under straight-forward performance indicators, which rely neither on problematic risk measures nor artificial selection criteria such as the diagnosis of original offending.
- (2) Non-custodial environments for correctional programmes are to be preferred and promoted, if only on the basis of cost effectiveness. Such programmes must rely on investment in pre-release and post release transition and institutional support so that re-offending targets will be secured.



This dual approach will work if it focuses on 'what works', rather than what 'might' work. It must also grow from a foundational environment of trust and mutual self-respect rather than in an atmosphere of discriminative access to behaviour management, and thereby early release, based on suspect measures of re-offending risk.

The development of community collaborations and partnerships in the development and delivery of custodial and non-custodial correctional programmes should be encouraged as the natural progression from custodial corrective climates designed to foster cultural change within and without the prison. Particularly in the areas of employment, work ethic generation and purposeful activity, locating corrective initiatives within community settings increases the potency of employment as a factor against re-offending.

Ultimately, a progressive punishment plan, which has as its central plank corrections and restoration, will need to argue its relevance in a different way to the prison. Imprisonment is accepted as a preferred sanction despite its failings because of an epidemic of community confidence in its capacity to protect. This approach can and should be challenged by an approach to punishment planning which values realistic evaluation. For corrections programmes inside the gaol in particular, consideration must be advanced for regimes, conditions and costs in the creation of practical prison performance indicators, such as: average hours engaged in purposeful activity; time unlocked; programme completions; total education study hours; nature of prison employment; releases on temporary (pre-release) license; accommodation in cells beyond their capacity design; prisoners testing positive for drugs; escapes; assaults and self harm; cost per uncrowded place.

A renewed commitment to rehabilitation within a smart and resource effective criminal justice model will build bridges between custodial and community corrections. Issues of cost and resource accountability in public spending are eventually catching up on the lavish investment in the failing prison of previous decades. Rights based and equitable correctional opportunities are the essential precursors for a return to rehabilitation that avoids the excesses of the sixties, the denial of the seventies, the rejection of the eighties, and the disappointment of the nineties.

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